

Assembly Bill No. 1856

CHAPTER 305

An act to amend Sections 995.710, 995.720, 995.740, and 995.760 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 9, 2014. Filed with
Secretary of State September 9, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1856, Wilk. Deposit in lieu of bond.

Existing law allows, among other things, bearer bonds and bearer notes of the United States or this state and certificates of deposit payable, not exceeding the federally insured amount, issued by banks or savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation to be deposited with the officer, as defined, in lieu of a bond required by an action or proceeding, except as provided.

This bill would allow all bonds and notes of the United States or the State of California and cashier's checks, payable to the officer, to be deposited with the officer in lieu of a bond, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 995.710 of the Code of Civil Procedure is amended to read:

995.710. (a) Except as provided in subdivision (e) or to the extent the statute providing for a bond precludes a deposit in lieu of bond or limits the form of deposit, the principal may, without prior court approval, instead of giving a bond, deposit with the officer any of the following:

(1) Lawful money of the United States or a cashier's check, made payable to the officer, issued by a bank, savings association, or credit union authorized to do business in this state. The money shall be held in trust by the officer in interest-bearing deposit or share accounts.

(2) Bonds or notes, including bearer bonds and bearer notes, of the United States or the State of California. The deposit of a bond or note pursuant to this section shall be accomplished by filing with the court, and serving upon all parties and the appropriate officer of the bank holding the bond or note, instructions executed by the person or entity holding title to the bond or note that the treasurer of the county where the judgment was entered is the custodian of that account for the purpose of staying enforcement of the judgment, and that the title holder assigns to the treasurer the right to collect, sell, or otherwise apply the bond or note to enforce the judgment debtor's liability pursuant to Section 995.760.

(3) Certificates of deposit payable to the officer, not exceeding the federally insured amount, issued by banks or savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(4) Savings accounts assigned to the officer, not exceeding the federally insured amount, together with evidence of the deposit in the savings accounts with banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(5) Investment certificates or share accounts assigned to the officer, not exceeding the federally insured amount, issued by savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(6) Share certificates payable to the officer, not exceeding the guaranteed or insured amount, issued by a credit union, as defined in Section 14002 of the Financial Code, whose share accounts are insured by the National Credit Union Administration or guaranteed or insured by any other agency that the Commissioner of Business Oversight has not deemed to be unsatisfactory.

(b) The deposit shall be in an amount or have a face value, or, in the case of bonds or notes, have a market value, equal to or in excess of the amount that would be required to be secured by the bond if the bond were given by an admitted surety insurer. Notwithstanding any other provision of this chapter, in the case of a deposit of bonds or notes other than in an action or proceeding, the officer may, in the officer's discretion, require that the amount of the deposit be determined not by the market value of the bonds or notes but by a formula based on the principal amount of the bonds or notes.

(c) The deposit shall be accompanied by an agreement executed by the principal authorizing the officer to collect, sell, or otherwise apply the deposit to enforce the liability of the principal on the deposit. The agreement shall include the address at which the principal may be served with notices, papers, and other documents under this chapter.

(d) The officer may prescribe terms and conditions to implement this section.

(e) This section does not apply to deposits with the Secretary of State.

SEC. 2. Section 995.720 of the Code of Civil Procedure is amended to read:

995.720. (a) The market value of bonds or notes, including bearer bonds and bearer notes, shall be agreed upon by stipulation of the principal and beneficiary or, if the bonds or notes are given in an action or proceeding and the principal and beneficiary are unable to agree, the market value shall be determined by court order in the manner prescribed in this section. A certified copy of the stipulation or court order shall be delivered to the officer at the time of the deposit of the bonds or notes.

(b) If the bonds or notes are given in an action or proceeding, the principal may file a written application with the court to determine the market value of the bonds or notes. The application shall be served upon the beneficiary

and proof of service shall be filed with the application. The application shall contain all of the following:

- (1) A specific description of the bonds or notes.
 - (2) A statement of the current market value of the bonds or notes as of the date of the filing of the application.
 - (3) A statement of the amount of the bonds or notes that the principal believes would be equal to the required amount of the deposit.
- (c) The application pursuant to subdivision (b) shall be heard by the court not less than five days or more than 10 days after service of the application. If at the time of the hearing no objection is made to the current market value of the bonds or notes alleged in the application, the court shall fix the amount of the bonds or notes on the basis of the market value alleged in the application. If the beneficiary contends that the current market value of the bonds or notes is less than alleged in the application, the principal shall offer evidence in support of the application, and the beneficiary may offer evidence in opposition. At the conclusion of the hearing, the court shall make an order determining the market value of the bonds or notes and shall fix and determine the amount of the bonds or notes to be deposited by the principal.

SEC. 3. Section 995.740 of the Code of Civil Procedure is amended to read:

995.740. If no proceedings are pending to enforce the liability of the principal on the deposit, the officer shall:

- (a) Pay quarterly, on demand, any interest on the deposit, when earned in accordance with the terms of the account or certificate, to the principal.
- (b) Deliver to the principal, on demand, any interest coupons attached to bonds or notes, including bearer bonds and bearer notes, as the interest coupons become due and payable, or pay annually any interest payable on the bonds or notes.

SEC. 4. Section 995.760 of the Code of Civil Procedure is amended to read:

995.760. (a) If the principal does not pay the amount of the liability on the deposit within the time prescribed in Section 995.750, the deposit shall be collected, sold, or otherwise applied to the liability upon order of the court that entered the judgment of liability, made upon five days' notice to the parties.

(b) Bonds or notes, including bearer bonds and bearer notes, without a prevailing market price shall be sold at public auction. Notice of sale shall be served on the principal. Bonds or notes having a prevailing market price may be sold at private sale at a price not lower than the prevailing market price.

(c) The deposit shall be distributed in the following order:

- (1) First, to pay the cost of collection, sale, or other application of the deposit.
- (2) Second, to pay the judgment of liability of the principal on the deposit.

- (3) Third, the remainder, if any, shall be returned to the principal.

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